

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

Clay Williams)	Opinion No. 53-03WC
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
Federal Express)	For: Michael S. Bertrand
)	Commissioner
)	
)	State File No. P-04013

Hearing held in Montpelier on June 20, 2003 and August 6, 2003
Record Closed on August 29, 2003

APPEARANCES:

Christopher McVeigh, Esq., for the Claimant
Marion Ferguson, Esq. and Glenn Morgan, Esq., for the Defendant

ISSUE:

Is the claimant's diabetes, diagnosed in June of 2002, causally related to his March 1, 1999 work-related injury?

EXHIBITS:

Claimant's Exhibit 1: Medical Records
Defendant Exhibit 2: Curriculum Vitae of Dr. Turco

FINDINGS OF FACT:

1. Claimant began working for Federal Express in May of 1992. At that time, he weighed approximately 230 pounds and had an active lifestyle that included camping, gardening, water skiing and hiking.

2. Claimant's work at Federal Express was that of a courier. He picked up or delivered upwards of 200 packages a day. On March 1, 1999 while delivering a 50-pound package to a residence, he slipped on a steep, icy driveway. Claimant was 36 years old at the time.
3. As a result of that fall, Claimant suffered a back injury that necessitated surgery. After the first procedure he returned to work briefly, then was out of work again for a second surgical procedure, a spinal fusion performed on August 13, 1999.
4. Claimant's activity level dramatically decreased. He was not able to work or engage in usual active recreational activities. At his most inactive level, he weighed 300 pounds.
5. In June of 2002, Claimant's primary care physician, Dr. Mark Pitcher, who is board certified in internal medicine, diagnosed him with Type II diabetes. He had treated the claimant since late 2000.
6. At the time of the hearing, claimant weighed 260 pounds.
7. Claimant believes that his maternal grandmother had Type II diabetes. However, his parents and siblings do not.
8. The three main risk factors for diabetes are genetic predisposition, age and weight. Clearly claimant's weight predisposed him to the condition, but his age and family history did not.
9. Diabetes mellitus is a condition where one has a reduction in the insulin produced by the pancreas, with a resultant rise in blood sugar. Exercise has an insulin-like effect on the body whereby less insulin is required. When one is unable to exercise, he loses this insulin-like effect of exercise and further increases the risk of developing diabetes if he gains weight.
10. Claimant currently controls his diabetes with diet, medication and exercise. He checks his blood sugar daily.
11. Two medical experts offered opinions in this case. Dr. Pitcher, claimant's primary care physician testified on his behalf. Dr. John Turco, board certified in endocrinology and internal medicine, offered an opinion for the defendant.

12. The experts agree on the risk factors for diabetes: age, weight and genetic predisposition. They agree that claimant does not have a strong family history. They agree that the greater one's weight is, the greater is one's demand for insulin. They agree that when one is unable to exercise, the body loses the sensitivity to insulin it had during a more active lifestyle.
13. Medical records demonstrate that claimant had been gaining weight even before his injury and could have reached the same high level even without the injury.
14. Dr. Pitcher opined that the claimant's increased weight and his inactivity accelerated the onset of his Type II diabetes.
15. Dr. Turco hypothesized that claimant may have had diabetes before it was diagnosed in 2002.
16. In pursuing this claim, claimant's attorney expended 46.6 hours of attorney time and incurred necessary costs of \$814.34.

DISCUSSION

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1963). The claimant must establish by sufficient credible evidence the character and extent of the injury and disability as well as the causal connection between the injury and the employment. *Egbert v. Book Press*, 144 Vt. 367 (1984).
2. There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941). Where the causal connection between an accident and an injury is obscure, and a layperson would have no well-grounded opinion as to causation, expert medical testimony is necessary. *Lapan v. Berno's Inc.*, 137 Vt. 393 (1979).
3. If a work injury aggravates or accelerates a pre-existing medical condition, then the condition is a compensable one. See *Jackson v. True Temper*, 151 Vt. 592,

4. Claimant argues that even if his weight predisposed him to the development of diabetes, his blood sugar was normal before the long period of inactivity and the medical evidence, particularly that linking inactivity to reduced insulin availability, supports the claimant's contention that the inactivity imposed on him from his work-related injury and its treatment accelerated the onset of his diabetes.
5. However, I cannot ignore that claimant's weight had been increasing even before the work-related injury and that information about other variables, such as diet, is unavailable. On this record, it would be no more than impermissible speculation to conclude that claimant's work-related injury and its sequelae accelerated the onset of his diabetes.

CONCLUSION OF LAW

As with *Foco v. Bariatrix International, Inc.*, Opinion No. 34-99WC (1999) (neither back injury nor its treatment caused diabetes) and *Kent v. Proctor Elementary School*, Opinion No. 30-01WC (2001) (work related exposure did not aggravate diabetic neuropathy), claimant has failed to sustain his burden of proving causation.

ORDER:

Therefore, based on the foregoing Findings of Fact and Conclusion of Law, this claim is DENIED.

Dated at Montpelier, Vermont this 17th day of December 2003.

Michael S. Bertrand
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.